

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JULIAN MONTESINO,)	
Petitioner,)	
)	CA #05-10319-RWZ
v.)	
)	
BRUCE CHADBOURNE, and the)	
DEPARTMENT OF HOMELAND)	
SECURITY,)	
Respondents.)	

RESPONDENTS' MOTION TO DISMISS

Now come the Respondents, pursuant to Fed. R. Civ. P. 12(b)(6), to request that the instant claim be dismissed on the ground that it fails to state a claim upon which relief may be granted.

In support of the motion, the Respondents submit the attached memorandum of law and Exhibit.

Wherefore, the Respondents requests that the instant claim be dismissed.

Respectfully submitted,

MICHAEL SULLIVAN
United States Attorney

/s/ Mark J. Grady
Mark J. Grady, Assistant U.S. Attorney
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Certificate of Compliance

The United States takes the position that Local Rule 7.1 requires "counsel" to confer, and therefore, the rule is inapposite where the opposing party is pro se. Alternatively, because the Petitioner is an inmate presently incarcerated by the Commonwealth of Massachusetts, the Respondents request leave to file without a Rule 7.1 conference.

/s/ Mark J. Grady
Mark J. Grady
Assistant United States Attorney

Certificate of Service

IT IS HEREBY CERTIFIED that on this 21st day of March 2005, service of the foregoing Memorandum has been made upon the Petitioner by first class mail.

/s/ Mark J. Grady
Mark J. Grady
Assistant United States Attorney